

## CHAPTER 4 DISCIPLINARY ACTION

[Prior to 3/9/88, see Landscape Architectural Examiners Board[540] Ch 4]

**193D—4.1(544B,17A) Acts or omissions which are grounds for revocation or suspension of a registration.** The board shall consider the following acts or omissions to be grounds to revoke or suspend a certificate of registration or to impose other licensee discipline on a registrant:

1. Fraud in procuring a certificate of registration.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of landscape architecture or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession of the registrant that would affect the registrant's ability to practice professional landscape architecture. A copy of the record of conviction or plea of guilty shall be conclusive evidence.
6. Fraud in representation as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Failure of a registrant to comply with Iowa Code chapter 272C or 544B and administrative rules implementing either chapter.
9. Failure of a registrant to complete continuing education requirements in accordance with 193D—Chapter 3.

**193D—4.2(544B,17A) Receipt of complaints.** The board shall receive and review all complaints which the board reasonably believes to indicate that a registrant may have committed an act that is cause for disciplinary action.

**4.2(1) Complaints.** Any person may file a complaint with the board charging that a registrant may have committed an act that is in violation of applicable law or rules. The complaint shall be written and signed by the complainant and accompanied with substantiating evidence indicating when, where, and how the registrant committed the violation. All complaints filed with the board shall be privileged and held confidential by all board members, peer review committee members and staff.

A person filing a complaint shall receive immunities in accordance with Iowa Code chapter 272C.

**4.2(2) Board-instigated complaints.** Upon presentation of evidence by a board member, the board's staff, or other state agency, the board may determine that a complaint should be formulated to charge that a registrant may have committed an act that is in violation of applicable law or rules. A majority vote of the board approving a written motion stating the charges and containing evidence as to when, where, and how the violation might have occurred shall constitute a complaint to be processed by the complaint procedure.

**193D—4.3(544B,17A) Peer review committee.** At any point during the complaint procedure or the investigatory procedure and prior to determining whether probable cause exists that a violation has occurred, the board may appoint a peer review committee to assist the board in reaching its decisions by conducting an investigation(s) of the complaint.

**4.3(1) *Makeup of the peer review committee.*** The committee shall consist of three or more registered landscape architects who are selected for their knowledge and experience in the particular aspect of landscape architecture involved in the complaint. The following are ineligible for membership:

- a. Members of the board.
- b. Close relatives of the alleged violator(s) or complainant.
- c. Individuals employed by the same firm or governmental unit as the alleged violator or complainant.

**4.3(2) *Authority.*** The committee's investigation shall be limited to interviewing of: complainants, the alleged violator, individuals with knowledge of the alleged violation, and individuals with knowledge of the alleged violator's reputation in the community.

The committee may not hire legal counsel, investigators, secretarial help or any other assistants without written authorization from the board.

**4.3(3) *Compensation.*** Committee members may receive per diem compensation equal to that received by board members for performing board duties. Committee members may be paid reasonable and necessary expenses that are incurred for travel, meals and lodging while performing committee duties within a budget limitation established by the board.

**4.3(4) *Reports.*** The peer review committee shall submit a written report within a reasonable period of time that either recommends dismissal of the complaint, further investigation by board counsel, or facts supporting probable cause that a violation has occurred.

**4.3(5) *Dismissal of peer review committee.*** Upon satisfactory completion of the investigation by the committee, the committee is to be dismissed by the board.

The board may dismiss individual members of a committee or add new members at any time.

#### **193D—4.4(544B, 17A) Complaint procedure.**

**4.4(1)** The board shall meet to review all complaints received and determine, based on the information received from the complaint, if a violation may have occurred. If the board concludes that there was no violation, it shall take no further action, and notify the complainant(s) of the board's conclusion. If the board concludes that a violation may have occurred, it shall initiate a disciplinary proceeding by filing a complaint against the registrant.

**4.4(2)** Complaint coding. Complaints shall be numbered by the board and referred to by number.

#### **193D—4.5(544B, 17A) Investigatory procedure.**

**4.5(1) *Notification.*** When notifying a registrant that it has initiated a disciplinary proceeding, the board shall indicate the general nature of the alleged violation and solicit information that may be helpful to the board in determining if there is substance to the allegation(s).

**4.5(2) *Appearance by the alleged violator.*** The board, if it considers it advisable, or if requested by the alleged violator, may give the registrant an opportunity of appearing before the board for an informal discussion of the facts and circumstance of the alleged violation.

**4.5(3) *Examination of information.*** The board shall carefully examine the information submitted by the alleged violator, or obtained at the informal discussion, before proceeding, and determine if in its opinion a violation has been correctly alleged or if additional information is required before it can make such a determination.

**4.5(4) *Determination of probable cause.*** The board shall review all information received and any additional information or report of investigation prepared by a peer review committee and determine if there is probable cause that a violation has occurred.

**4.5(5)** *No probable cause.* If the board determines that there is no probable cause it shall dismiss the complaint and so notify the alleged violator and the complainant.

**4.5(6)** *Probable cause.* If the board determines there is probable cause, the board shall:

- a. Seek an informal stipulation or settlement of matter, or
- b. Take appropriate action under the provisions of Iowa Code section 544B.19, or
- c. Commence a contested case proceeding by serving on the alleged violator the notice required by Iowa Code section 544B.16.

**4.5(7)** *Conflict of interest.* If the alleged violator shall be a member of the board, or if a member of the board has a possible conflict of interest in any disciplinary matter before the board, the member shall abstain from participation in any consideration of, or acts of the board upon the subject of the complaint.

**4.5(8)** *Alleged violations committed by a person not registered by the board.* When the board receives information or a complaint that indicates a person who is not registered with the board may have violated Iowa Code section 544B.18, the board shall take appropriate steps to obtain the facts necessary to make a determination as to whether there is probable cause for taking further action.

If the facts indicate that a violation has occurred, the board shall:

- a. Seek to settle the matter by obtaining an informal stipulation or consent order, or
- b. Seek to obtain an injunction as provided by Iowa Code section 544B.19, or
- c. Certify the facts to the attorney general or a county attorney for appropriate action as provided by section 544B.18.

**193D—4.6(544B,17A) Informal stipulation or settlement.**

**4.6(1)** Informal stipulation or settlement negotiations may be initiated by either party to the controversy prior to or during a contested case proceeding. However, neither party is obligated to utilize this informal procedure to settle the controversy pursuant to such informal procedures. The board shall approve the terms of the stipulation or settlement and the terms shall be in writing for filing by the board.

**4.6(2)** Reserved.

**193D—4.7(544B,17A) Notice and hearing.**

**4.7(1)** The board shall initiate all hearings in accordance with the provisions of Iowa Code section 544B.16 and chapter 17A. These rules are not intended to be an alternative to section 544B.16.

**4.7(2)** Hearing panel. The board shall designate the hearing panel which shall be comprised of three members of the board who hold a certificate of registration. The board shall also designate the presiding officer. The hearing panel, after receiving the evidence, shall make findings of fact and report to the full board. The hearing panel shall also make a recommendation for or against license discipline and a recommendation as to the sanction(s) that should be imposed. After reviewing the findings of fact of the panel, the board, by five-sevenths vote of the entire board, shall accept or reject the hearing panel's recommendations. If the board rejects the hearing panel's recommendations, it shall, by a five-sevenths vote of the entire board, make the final determination.

**4.7(3)** Adjournment of hearing. The hearing panel may adjourn a hearing for good cause, from time to time, upon request of either the party charged or legal counsel representing the board, for the purposes of a fair hearing.

**4.7(4)** Specialists represented on a hearing panel. If, in the opinion of a majority of the board, it is desirable to have a certain expertise represented on the hearing panel, it may obtain specialists within an area of practice of the landscape architecture profession to serve as members of the three-member hearing panel. Specialists shall not have a conflict of interest in serving on the panel. If nonboard member specialists comprise the hearing panel, the panel shall only make findings of fact and report to the board. Such findings shall not include any recommendation for or against licensee discipline. The full board, by majority vote, shall make all determinations based on the findings of fact reported to the board by the hearing panel.

**4.7(5)** Conflict of interest. Any board member who has a possible conflict of interest in any matter resulting in a hearing before the board shall be disqualified from serving on the hearing panel and from participating in the decision resulting from the hearing.

**4.7(6)** Immunities. The presiding officer may grant immunity to a witness as provided by Iowa Code section 272C.6(3), only if all members of the hearing panel concur in the action. The official record of the hearing shall include the reasons for granting the immunity.

**193D—4.8(544B,17A) Disciplinary sanctions.** Iowa Code sections 544B.15 and 272C.3(2) give the board authority to impose the following disciplinary action(s):

1. Revoke a certificate of registration.
2. Suspend for a specified period a certificate of registration.
3. Revoke or suspend for a specified period, the privilege of a registrant to engage in one or more areas of the practice of landscape architecture provided the registrant has demonstrated a lack of qualifications to perform certain types of services for the public.
4. Impose a period of probation under specified conditions.
5. Require additional continuing education as a condition precedent to the termination of any suspension or reinstatement of a certificate of registration or suspended privilege.
6. Require a registrant to be reexamined as a condition precedent to the termination of any suspension or reinstatement of a certificate of registration or suspended privilege. The board may use the CLARB Landscape Architectural Registration Examination or subjects thereof for purposes of reexamination.
7. Impose civil penalties, the amount of which shall be at the discretion of the board, but which shall not exceed \$1,000. Civil penalties may be imposed for:
  - Violations of Iowa Code section 544B.15 and Iowa Code sections 272C.9(2) and 272C.9(3).
  - Failure to comply with an order of the board.
8. Issue citations and warnings respecting licensee behavior which is subject to the imposition of other sanctions by the board.

**193D—4.9(544B,17A) Publicizing disciplinary actions.**

**4.9(1)** *Publication of final decision.* The board shall publish the final decisions of the board relating to disciplinary proceedings in such manner and for such periods of time as it deems appropriate to protect the public.

**4.9(2)** *Advise other boards.* The board shall advise other state boards of landscape architecture, who have issued a similar certificate of registration, or permit to an Iowa registrant, as to disciplinary action taken against a registrant if it reasonably believes that the cause for the disciplinary action may be considered as cause by the other state board(s) of landscape architecture.

**193D—4.10(544B,17A) Registrant's duty to report.**

**4.10(1) *Reporting acts or omissions committed by a registrant.*** Iowa Code section 272C.9(3) requires a registrant of this board to report acts or omissions of other registrants that demonstrate a lack of qualifications which are necessary to ensure the residents of this state a high standard of professional service. When a registrant observes an act or offense as set forth in section 544B.15, the registrant shall report the violation, in writing, to the board office setting forth the name of the registrant alleged to have committed the act or offense of any board rule violated, together with a copy of all material that evidences the violation.

**4.10(2) *Reporting judgments and settlements alleging malpractice.*** Iowa Code section 272C.9(3) requires a registrant to report to the board every adverse judgment in a professional malpractice action the registrant is a party to, and every settlement of a claim against the registrant alleging malpractice. When a registrant is a party to an adverse judgment or settlement, the registrant shall file a report, in writing, forwarded to the board's office, setting forth the name and address of the client, date claim was originally made, a brief description of the circumstances precipitating the claim and a copy of the judgment or settlement agreement resulting from the claim.

**4.10(3) *Timely reporting.*** The reports required by subrules 4.9(1) and 4.9(2) are to be forwarded to the board 60 days from the initial obtaining of the information required to be reported.

**4.10(4) *Failure to make reports.*** Upon obtaining information that registrant failed to file a report required by rule 4.9(544B,17A) within a 60-day time the board shall initiate a disciplinary proceeding against the registrant.

**193D—4.11(252J) Certificates of noncompliance.** The board shall suspend or revoke a certificate of registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code Supplement chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

**4.11(1)** The notice required by Iowa Code Supplement section 252J.8 shall be served upon the registrant by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the registrant may accept service personally or through authorized counsel.

**4.11(2)** The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by section 252J.8, shall be 60 days following service of the notice upon the registrant.

**4.11(3)** The board's executive secretary is authorized to prepare and serve the notice required by section 252J.8 and is directed to notify the registrant that the certificate of registration will be suspended, unless the registration is already suspended on other grounds. In the event a registration is on suspension, the executive secretary shall notify the registrant of the board's intention to revoke the certificate of registration.

**4.11(4)** Registrants shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**4.11(5)** All board fees for license renewal or reinstatement must be paid by registrants before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to chapter 252J.

**4.11(6)** In the event a registrant timely files a district court action following service of a board notice pursuant to sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of revocation or suspension, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**4.11(7)** The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant when the registration is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

**193D—4.12(272C) Impaired licensee review committee.** Pursuant to the authority of Iowa Code section 272C.3(1) “k,” the Iowa landscape architectural examining board establishes the impaired licensee review committee.

**4.12(1) Definitions.** The following definitions are applicable wherever such terminology is used in the rules regarding the impaired licensee review committee.

“*Committee*” means the impaired licensee review committee.

“*Contract*” means the written document establishing the terms for participation in the impaired licensee program prepared by the committee.

“*Impairment*” means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability.

“*Licensee*” means a person registered under Iowa Code chapter 544B.

“*Self-report*” means the licensee's providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board's receiving a complaint or report alleging the same from a second party.

**4.12(2) Purpose.** The impaired licensee review committee evaluates, assists, monitors, and, as necessary, makes reports to the board on the recovery or rehabilitation of licensees who self-report impairments.

**4.12(3) Composition of the committee.** The chairperson of the board shall appoint the members of the committee. The membership of the committee includes, but is not limited to:

- a. One licensee, registered under Iowa Code chapter 544B;
- b. One public member of the landscape architectural examining board;
- c. One licensed professional with expertise in substance abuse/addiction treatment programs.

**4.12(4) Eligibility.** To be eligible for participation in the impaired licensee recovery program, a licensee must meet all of the following criteria:

- a. The licensee must self-report an impairment or suspected impairment directly to the office of the board;
- b. The licensee must not have engaged in the unlawful diversion or distribution of controlled substances or illegal substances;
- c. At the time of the self-report, the licensee must not already be under board order for an impairment or any other violation of the laws and rules governing the practice of the profession;
- d. The licensee has not caused harm or injury to a client;

e. There is currently no board investigation of the licensee that the committee determines concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care;

f. The licensee has not been subject to a civil or criminal sanction or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of landscape architecture;

g. The licensee has provided truthful information and fully cooperated with the board or committee.

**4.12(5) Meetings.** The committee shall meet as necessary in order to review licensee compliance, develop consent agreements for new referrals, and determine eligibility for continued monitoring.

**4.12(6) Terms of participation.** A licensee shall agree to comply with the terms for participation in the impaired licensee program established in a contract. Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensee in writing.

**4.12(7) Noncompliance.** Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for purpose of disciplinary action.

**4.12(8) Practice restrictions.** The committee may impose restrictions on the licensee's practice as a term of the contract until such time as it receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the board for appropriate action.

**4.12(9) Limitations.** The committee establishes the terms and monitors a participant's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of or successfully complete the impaired licensee program. Participation in the program under the auspices of the committee shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant shall be referred to the board for appropriate action.

**4.12(10) Confidentiality.** The committee is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the impaired licensee program under the auspices of the committee is not a matter of public record.

These rules are intended to implement Iowa Code chapters 252J and 272C.

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